



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

LAW OFFICE OF MICHAEL A. SANZO, LLC
15400 CALHOUN DR.
SUITE 125
ROCKVILLE MD 20855

MAILED

JUL 14 2010

OFFICE OF PETITIONS

In re Patent of Rieping : DECISION ON REQUEST
Patent No. 7,638,313 : FOR
Issue Date: December 29, 2009 : RECONSIDERATION OF
Application No. 10/733,776 : PATENT TERM ADJUSTMENT
Filed: December 12, 2003 : and
Atty Docket No. 7601/80921 : NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on January 22, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand ninety-six (1096) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand ninety-six days is **GRANTED to the extent indicated herein.**

The Office does not concur with patentee's assertion that the period of B delay is 1096 days. The period of B delay in this case is 929 days. Unless a Request for Continued Examination ("RCE") is filed, the period of B Delay ends of the date the patent issues. In this case, no RCE was filed. The maximum period of B Delay in this case is 1113 days, which is the number of days beginning on December 13, 2006, the day after the date three years after the application's filing date, and ending on December 29, 2009, the date the patent issued.

Three days must be subtracted from this total because there is overlap between the A delay period and the B delay period (June 14, 2008 to June 16, 2008)

In addition, patentee's determination fails to exclude the number of days consumed by appellate review. As stated in

35 U.S.C. 154(b)(1)(B)(ii), B delay does not include "any time consumed by appellate review by the Board of Patent Appeals and Interferences." The period of B delay does not include the 181 day period beginning on April 27, 2007, the date the Notice of Appeal was filed, and ending on October 24, 2007, the date a non-final Office action was mailed. Excluding the 181 days consumed by appellate review and taking the 3 day period of overlap into consideration results in a period of B delay of 929 days (1113-181-3).


The correct patent term adjustment is 804 days, which is the sum of 16 days of A Delay and 929 days of B Delay reduced by 141 days of applicant delay.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under 37 CFR § 1.136.

The Office acknowledges receipt of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **eight hundred four (804) days**.

Telephone inquiries should be directed to the undersigned at (571) 272-3230.


Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,638,313 B2

DATED : December 29, 2009

DRAFT

INVENTOR(S) : Rieping

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 972 days

Delete the phrase "by 972 days" and insert – by 804 days--